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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,217	03/09/2004	Roy C. Wiley	ZIM0420	3495

7590 04/03/2007  
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EXAMINER
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SAN MIGUEL, ANITZA M

ART UNIT	PAPER NUMBER
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3733

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/03/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/798,217

Applicant(s)

WILEY ET AL.

Examiner

Anitza M. San Miguel

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/9/2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 11/26/2004
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "a sleeve" and "a flexible portion" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

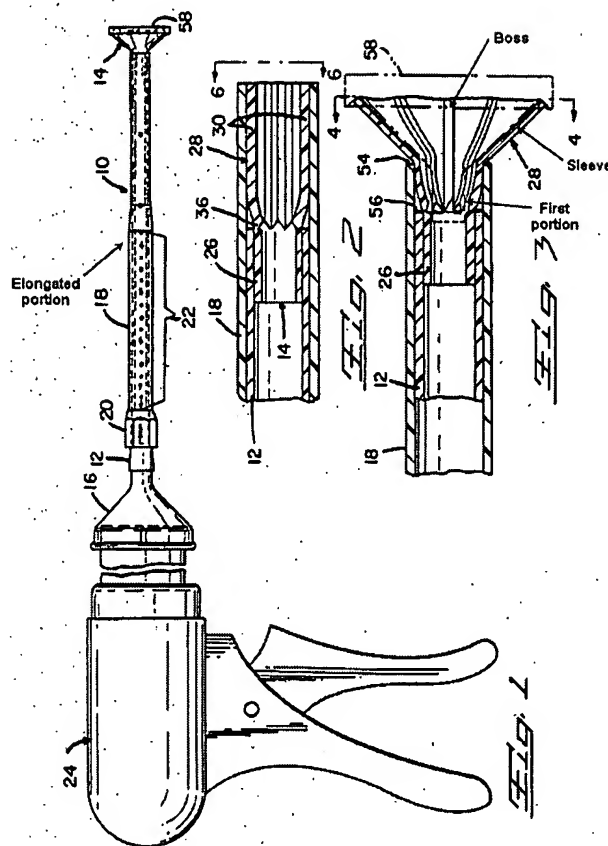
Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Murray (Reference U.S. Patent “4,627,434”).

Murray discloses an orthopaedic injection restrictor apparatus comprising: a nozzle (10) including an elongated portion (see Figure 1 below); and an orthopaedic plug (28) including a first portion (see Figure 3 below) releasably engaged with the elongated portion of the nozzle (10) and further including a plurality of flaps (30) extending radially outwardly from said first portion (col. 3, lines 49-68 and col. 4, lines 1-10). At least one of the flaps (30) is resiliently hinged to the first portion of the orthopaedic plug (28; col. 3, lines 52-60 and col. 4, lines 15-28). The elongated portion of the nozzle (10) defines a sleeve (12) and the first portion of the orthopaedic plug partially extends into the sleeve (see Figure 1-3 below). The first portion of the orthopaedic plug (28) includes a boss (see Figure 3 below) positioned within the sleeve. The apparatus further comprises a plurality of graduations (22) on the elongated portion of the nozzle (10; col.3, lines 40-43). The plurality of graduations (22) extends linearly away from at least one of the flaps (col. 3, lines 40-43). The elongated portion of the nozzle (10) includes a flexible portion (14). The first portion of the orthopaedic plug (28) defines a sleeve and the elongated portion of the nozzle (10) extends into the sleeve.

The apparatus further comprises a plurality of graduations on the elongated portion of the nozzle (10; col.3, lines 40-43); wherein the elongated portion of the nozzle (10) defines a sleeve, the first portion of the orthopaedic plug (28) extends into the sleeve, the plurality of graduations (22) extends linearly away from at least one of the flaps, and the elongated portion of the nozzle (10) includes a flexible portion (14). The first portion of the orthopaedic plug includes a boss (see Figure 3 below) within the sleeve. The apparatus further comprises: a plurality of graduations (22) on the elongated portion of the nozzle (10); wherein the first portion of the orthopaedic plug (28) defines a sleeve and the elongated portion of the nozzle (10) extends into the sleeve, the plurality of graduations (22) extends away from at least one of the flaps (30), and the elongated portion of the nozzle includes a flexible portion.

Murray further discloses an apparatus comprising: means for injecting the substance into the cavity; and means, releasably engaged with the injecting means, for plugging the cavity (col. 3, lines 44-48). The injecting means and the plugging means form a means for ejecting the plugging means from the injecting means simultaneously with injecting the substance into the cavity (col.2, lines 20-43 and col. 3, lines 44-48). The injecting means includes a means for setting the depth (col. 3, lines 32-43).

Murray further discloses a method comprising the steps of: injecting the substance into the cavity; and ejecting the plug into the cavity simultaneously with the ejecting step (col.2, lines 20-43).



### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for cited art of interest.

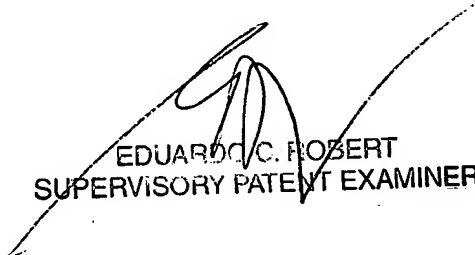
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anitza M. San Miguel whose telephone number is 571-272-3279. The examiner can normally be reached on 8:00 am - 5:30 pm EST (M-F).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ASM

  
EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER